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In the Supreme Court of the United States.

OCTOBER TERM, 1901.

THE UNITED STATES, APPELLANT,
v.
WILLIAM T. SAMPSON, REAR-ADMIRAL, United States Navy, et al.
No. 597.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

APPELLANT'S BRIEF ON MOTION TO DISMISS.

The motion to dismiss the appeal of the United States in this case is eminently proper, and in fact inevitable, in view of the action of the court of appeals of the District of Columbia upon the motion to dismiss the appeal of the United States taken to that court. The chief justice of the court of appeals is really the only member of that court who holds that an appeal from a decree of the supreme court of the District of Columbia in a prize case should be taken to this court and not to the court of appeals. Mr. Justice Shepard dissented absolutely, while Mr. Justice Morris stated that he was not satisfied that the court of appeals had not jurisdiction to entertain the appeal, but would concur in the chief justice's opinion in order that this court might determine the matter

positively. It is to secure such a determination in the simplest and speediest way that the counsel for the appellee have made this motion.

The appeal of the United States from the decree of the supreme court of the District of Columbia was taken first to the court of appeals of the District of Columbia because the letter of the statute so required, and the counsel for the United States did not feel justified in such a case in putting an interpretation upon the statute at variance with its letter. Now, however, that the court of appeals has decided, at least *pro forma*, that the appeal should be taken directly to this court, it is submitted in behalf of the United States that such an appeal should be entertained.

As the opinion of the chief justice of the court of appeals contains a very full discussion of the whole matter, it is herewith submitted.

ALVEY, chief justice:

This appeal is brought into this court from the decree passed in the court below sitting in special term as a district court of the United States for the District of Columbia, and the decree appealed from is one of condemnation of certain property captured and claimed as lawful prize of war. By the libel it is alleged that the Spanish cruiser *Infanta Maria Teresa* was captured in the naval engagement fought off Santiago, Cuba, on July 3, 1898, and that certain guns and munitions of war were also captured on and taken from other Spanish vessels which were sunk or destroyed in the engagement, all of which captures, as alleged, were condemnable as lawful prize of war.

The United States appeared to the proceeding and filed an answer to the libel; and by the answer it is denied that the property captured is liable to condemnation; or if condemnable it is denied that the captors are entitled to receive a moiety of its value. Evidence was produced, and upon hearing a decree of condemnation was entered. On the question of prize or no prize the decree of condemnation is in the nature of a final decree, and therefore subject to the right of appeal. There being doubt, however, in the minds of counsel or proctors of the parties, as to what court the appeal would lie, there were two appeals entered, one to the Supreme Court of the United States and the other to this court. The transcript having been brought in, the appellee, the libellant in the court below, has moved that the appeal to this court be dismissed, upon the ground that it does not properly lie to this court.

I do not understand that there is any question made as to the want of competent jurisdiction of the justice of the supreme court of the District, holding the special term at which the appeal decreed from was made, to take cognizance of the libel and to adjudicate the question of prize or no prize, and to enter a decree accordingly.

This power and jurisdiction are supposed to be conferred by the language employed in section 762, Revised Statutes, District of Columbia, which is as follows:

"That any one of the justices may hold a special term, with the same powers and jurisdiction

possessed and exercised by district courts of the United States."

This is the substitute, as provided in the Revised Statutes, for the old and independent district court of this District, established under the act of Congress of 1802. (*Ex parte Bradley*, 7 Wall., 364, 371.)

The district courts of the United States have been, since the organization of the Government, invested with the powers and original jurisdiction over captures and seizures as subjects of prize. By the judiciary act of the 24th of September, 1789 (C. 20, sec. 9), they were invested with exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under imposts and navigation or trade laws of the United States, where the seizures are made upon the high seas, and also of all other seizures made under the laws of the United States (1 Kent Com., 304). If, therefore, the justice holds the special term of the supreme court of the District, as a district court, with *the same powers and jurisdiction possessed and exercised by other district courts of the United States*, it would seem to be too clear for any question to be made that the special term so held for the exercise of the jurisdiction designated must be regarded and treated as a prize court in the same sense and to the like extent as the other district courts of the United States.

Assuming, then, as clear that the justice holding the special term had ample jurisdiction to adjudicate the question of prize or no prize, and to enter a decree of condemnation. the

question then arises, To what court does the right of direct appeal exist from such decree of condemnation? It is not pretended that there is any concurrent right of appeal in such case to different courts. The right of appeal from the district courts in matters of prize has been direct to the Supreme Court of the United States down to the time of the passage of the act of Congress of February 9, 1893, and is direct to that court still in all cases, unless it be changed or modified as to the District of Columbia by the act of February 9, 1893.

Whether this act of 1893, as to the District of Columbia, has affected such change in the right of appeal depends upon the language of the preexisting general statutes, upon the subject, as well as upon that of the act of 1893. It is therefore necessary to refer specially to the several provisions of the statutes regulating the right of appeal from decisions in cases of prize.

The Revised Statutes, United States, title Judiciary, provides:

"SECTION 695. An appeal shall be allowed to the Supreme Court from all final decrees of any district court in prize causes where the matter in dispute, exclusive of costs, exceeds the sum or value of $2,000; and shall be allowed, without reference to the value of the matter in dispute, on the certificate of the district judge that the adjudication involves a question of general importance. And the Supreme Court shall receive, hear, and determine such appeals, and shall always be open for the entry thereof."

Section 698 provides for transmitting to the Supreme Court a transcript of the record and

proofs in cases of prize or no prize; and also provides that new evidence in admiralty and prize causes may be received in the Supreme Court. And by section 1009 it is provided that "Appeals in prize causes shall be made within thirty days after the rendering of the decree appealed from, unless the court previously extends the time, for causes shown in the particular case: *Provided*, That the Supreme Court may, if in its judgment the purposes of justice require it, allow an appeal in any prize cause, if it appears that any notice of appeal, or of intention to appeal, was filed with the clerk of the district court within thirty days next after the rendition of the final decree therein."

It then appears that all appeals from the district courts in matters of prize were direct to the Supreme Court of the United States prior to the act of Congress of March 3, 1891, entitled "An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes." By the fifth section of that act it is provided "that appeals or writs of error may be taken from the district courts or from the existing circuit courts *direct* to the Supreme Court in the following cases," and among the cases enumerated as appealable *directly* to the Supreme Court is that "from the final sentences and decrees in prize causes."

This statute, as it applies to appeals in cases of prize, was subjected to critical examination in the light of all existing legislation upon the subject by the Supreme Court in a prize pro-

ceeding in the case of *The Paquete Habana* (175 U. S., 677). In that case it was held that the Supreme Court of the United States has, by virtue of this statute, jurisdiction of appeals from *all final sentences and decrees in prize causes, without regard to the amount in dispute*, and without any certificate of the district judge as to the importance of the particular case. It construed the statute as being a full and complete regulation of the subject, and *as exclusive* of all other regulations of the particular class of cases provided for. In stating the conclusion upon the examination of the statute, the court said:

"We are of opinion that the act of 1891, upon its face, read in the light of settled rules of statutory construction and of the decisions of this court, clearly manifests the intention of Congress to cover the whole subject of the appellate jurisdiction from the district and circuit courts of the United States so far as regards in what cases, as well as to what courts, appeals may be taken, and to supersede and repeal to this extent all the provisions of earlier acts of Congress, including those that imposed pecuniary limits upon such jurisdiction; and as part of the new scheme to confer upon this court jurisdiction of appeals from all final sentences and decrees in prize causes, without regard to the amount in dispute, and without any certificate of the district judge as to the importance of the particular case."

It is conceded that if the right of appeal had to be determined according to the act of March 3, 1891, as construed by the Supreme Court,

the appeal would have to go to that court, if to any final court of review, sitting as the highest prize court of the United States. But it is contended on behalf of the United States that the act of March 3, 1891, had been changed or modified, so far as the District of Columbia is concerned, by the subsequent act of Congress of February 9, 1893, providing for the organization of this court. It is contended that by the general and comprehensive terms employed in section 7 of this latter act of 1893, declaring "that any party aggrieved by any final order, judgment, or decree of the supreme court of the District of Columbia, or of any justice thereof, may appeal therefrom to the court of appeals hereby created; and upon such appeal the court shall review such order, judgment, or decree, and affirm, reverse, or modify the same as shall be just," the present appeal is fully authorized, and that it is properly here. It must be observed, however, that this general provision of the act of 1893 makes no mention or reference to appeals in cases of prize, which have always been regulated by special provision; and as Congress had only recently before the passage of the act of 1893 made special and particular provision for the exercise of the right of appeal from the final sentences and decrees in all cases of prize directly to the Supreme Court of the United States—that tribunal which has from the commencement of the Government most appropriately exercised such appellate jurisdiction—it is difficult to suppose that Congress intended to change or modify to any extent,

by mere implication, the general rule prescribed, and to make for this jurisdiction alone a special and different rule from that which applies to all the rest of the country. There is really no repugnancy between the acts; and the principle of construction is well settled that repeals by implication are never favored unless conflict or repugnancy is manifest. As said by the Supreme Court in the case of *McCool* v. *Smith* (1 Black, 459, 470), "The leaning of the courts is against the doctrine of implied repeal, if it be possible to reconcile the two acts of the legislature together." It is but a reasonable presumption that the legislature did not intend to keep really conflicting enactments in the statute book, or to affect so important a measure as the repeal of a law without expressing an intention so to do. Such an interpretation, therefore, is not to be adopted unless it be inevitable. (*United States* v. *Walker*, 22 How., 299; *United States* v. *Sixty-seven Packages*, 17 How., 85.)

It has been decided in many cases, and the principle is laid down as unquestionable in text-books of high authority, that a general statute without negative words will not repeal the particular provisions of a former statute unless the two acts are irreconcilably inconsistent. (Dwarris on Stats., 532; Sedgw., Stat. and Const. Law, 123; *Brown* v. *County Com.*, 21 Pa., 37.) The reason and philosophy of the rule are stated to be that when the mind of the legislator has been turned to the details of a subject, and he has acted upon it, a subsequent statute

in general terms, or treating the subject in a general manner, and not expressly contradicting the original act, shall not be considered as intended to affect the more particular or positive previous provisions, unless it is absolutely necessary to give the latter act such a construction in order that its words shall have any meaning at all. There are many instances to be found in the books of the application of this rule of construction; as, for example, where an act of Parliament had authorized individuals to inclose and embank portions of the soil under the river Thames, and had declared that such land should be "free from all taxes and assessments whatsoever." The land-tax act, subsequently passed, by general words embraced all the land in the Kingdom, and the question arose whether the land mentioned and exempted by the former act had been legally taxed; and the Court of King's Bench held that the tax was illegally assessed. Lord Chief Justice Kenyon said:

"It can not be contended that a subsequent act of Parliament will not control the provisions of a prior statute, if it were intended to have that operation But there are several cases in the books to show that where the intention of the legislature was apparent that the subsequent act should not have such an operation, then, even though the words of such statute, taken strictly and grammatically, would repeal the former act, the courts of law, judging for the benefit of the subject, have held that they ought not to receive such a construction."

(*Williams* v. *Pritchard*, 4 D. and E., 2; Dwarris on Sats., 514.)

As I have said, there is no conflict or repugnancy whatever between the act of 1891 and that of 1893; but there is even a stronger reason for supposing that the general rule prescribed by the former act was not intended to be changed or modified, as applied to the courts of this District, by the subsequent act of 1893, than the mere absence of conflict or repugnancy between the two acts; and that is, the effect in the ultimate right of appeal, produced upon the judgment on appeal to this court. We can not suppose it to have been the intention of Congress in passing the act of 1893 to give the right of appeal to this court in cases of prize, and to make the judgment on such appeal final and conclusive in all cases where the amount in dispute is $5,000 or less; and thus preclude the right of review in such cases by the Supreme Court—the highest prize court of the country. But such would appear to be the effect of an appeal to this court. For by section 8 of the act of 1893, it is provided "that any final judgment or decree of the said court of appeals may be reexamined and affirmed, reversed, or modified by the Supreme Court of the United States, upon writ of error or appeal, in all cases in which the matter in dispute, exclusive of costs, shall exceed the sum of $5,000, in the same manner and under the same regulations as heretofore provided for in cases of writs of error on judgments or appeals from decrees, rendered in the supreme court of the District of Columbia,

and also in cases, without regard to the sum or value of the matter in dispute, wherein is involved the validity of any patent, or copyright, or in which is drawn in question the validity of a treaty or statute of or an authority exercised under the United States." The right of appeal thus given from the judgments or decrees of this court to the Supreme Court of the United States, is upon terms and conditions quite different from the right of appeal in prize cases to the Supreme Court, under the act of 1891. Under this latter act the right of appeal in all cases is given to the Supreme Court without regard to the amount in dispute; but, as we have seen, the right of appeal from this court to the Supreme Court, with certain exceptions that do not apply here, can only be exercised where the amount in dispute exceeds $5,000. This eighth section of the act of 1893 embraces all the cases, or class of cases, in which an appeal can be taken to the Supreme Court from this court; and I am very clearly of opinion that this general provision does not, and was not intended to, embrace appeals from this court to the Supreme Court in prize cases.

It is suggested that the special term, exercising the same powers and jurisdiction possessed and exercised by the district courts of the United States, is not a district court of the United States in the sense and meaning of the district courts mentioned in section 5 of the act of March 3, 1891, and from which appeals are given to the Supreme Court of the United States, and hence no appeal will lie to the latter court from a

decree passed at the special term under the act of 1891. But that construction is certainly too restricted and narrow to be sound or reasonable, and no authority has been produced to support it. On the contrary, I think there is reliable authority to show that the exercise of the powers and jurisdiction of the district courts of the United States by the justice holding the special term constitutes that court to all intents and purposes a district court, with the powers and jurisdiction of the district courts mentioned in the fifth section of the act of 1891.

The superior courts of general jurisdiction of the District of Columbia have been repeatedly held to be courts of the United States as distinguished from mere territorial courts. But whether the court belongs to the class of inferior courts provided for by the Constitution, or belongs to the class of territorial courts that Congress may provide for and establish in the organization of territorial government, can make no difference in the right of appeal in a case like the present. The question is, What jurisdiction has been conferred upon the court, and how that jurisdiction is to be exercised. (*In re Cooper*, 143 U. S., 472, 494, 512.)

In the case of *Durousseau* v. *United States* (6 Cranch, 307), the question presented was quite analogous to that presented in this case, as to the manner of conferring jurisdiction. In that case the act of Congress erecting Louisiana into two territories established a district court in the Territory of Orleans, consisting of one judge, who, as it was declared, "shall, in all

things, have and exercise the same jurisdiction and powers which are by law given to, or may be exercised by, the judge of Kentucky district." On writ of error to the district court for the district of Orleans, it was contended, on behalf of the United States, that the Supreme Court had no jurisdiction over the case, because there could be no writ of error to or appeal from the decisions of such district court of Orleans to the Supreme Court, such right of appeal not having been specially provided for. But that contention was not supported by the Supreme Court, and the motion to dismiss was denied, the court holding that the writ of error would lie to the Orleans district court the same as to the Kentucky district court. The court said that the contention of the United States was founded upon an alleged restriction of the right to writ of error to the district court, but that such implication ought not to be made for the purpose of defeating the intent of the legislature. The decision in that case shows that it is competent to the legislature to provide that the nature and extent of the judicial power conferred upon a particular court shall be ascertained and measured by reference to that conferred upon another court, and that the classification and denomination of the court will be according to the nature and extent of the powers and jurisdiction with which it may be thus invested.

Upon full consideration, I am of opinion, for the reasons stated, that this appeal has been improvidently and without legal warrant taken to this court, and it must, therefore, be dismissed.

> But, with a view of preserving the appeal taken to this court, in the event that the Supreme Court should decide that such appeal was rightfully taken to this court and not to the Supreme Court direct, I think it would be proper to withhold the order dismissing the appeal until the question can be passed upon by the Supreme Court on an appeal from the district court, unless it be desired by the appellant to take an appeal to the Supreme Court from the order dismissing this appeal, in which case the order of dismissal will be entered at once.

The concurring opinion of Mr. Justice Morris reads as follows:

> Mr. Justice MORRIS concurring:
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> In these cases I am not satisfied that we have not jurisdiction. But to hold that we have jurisdiction would be to deny the jurisdiction of the Supreme Court of the United States. If such holding be the correct one, I prefer that it should come from the Supreme Court, and not from us. It seems to me to be appro[illegible]iate that, where there is a doubt, that high tribunal should itself determine the point. Moreover it would seem that by our denial of our own jurisdiction at this time the interests of justice would be best subserved. For these reasons I concur with the chief justice in the ruling that the appeals in these cases lie directly to the Supreme Court of the United States, and not to this court.

In addition to what the learned chief justice of the court of appeals has said, the following may also be suggested.

The act of June 30, 1864 (13 Stats., 306), is entitled "An act to regulate prize proceedings and the distribution of prize money, and for other purposes." This act was obviously intended as a comprehensive law upon the whole subject of prize, including the legal proceedings in regard thereto in so far as they were not expressly covered by the then existing general laws regulating proceedings in the courts of the United States. The provisions of this statute, which contains thirty-five sections, are very full and complete, and it is evident that Congress intended in this act to regulate all proceedings in prize, in whatever court such proceedings might be brought.

The thirteenth section of this act provides as follows:

> SEC. 13. *And be it further enacted*, That appeals from the district court of the United States in prize causes shall be directly to the Supreme Court, and shall be made within thirty days of the rendering of the decree appealed from, unless the court shall have previously extended the time for cause shown in the particular case, and the Supreme Court shall always be open for the entry of such appeals. Such appeals may be claimed whenever the amount in controversy exceeds two thousand dollars, and, in other cases, on the certificate of the district judge that the adjudication involves a question of general importance.

When this act became a law, the courts in the District of Columbia were regulated by the act of March 3, 1863 (12 Stats., 762), the fourth section of which provided that "any one of said justices may hold a

district court of the United States for the District of Columbia in the same manner and with the same powers and jurisdiction possessed and exercised by other district courts of the United States."

In view of the fact that the act of 1864 was obviously intended to provide for all prize proceedings, whether in the "district court of the United States for the District of Columbia," or in the "other district courts of the United States," it is evident that the words of section 13, "appeals from the district courts of the United States in prize causes shall be directly to the Supreme Court," were intended to apply to prize proceedings in the District of Columbia as well as elsewhere. In so far, therefore, as this provision may have been in conflict with the general provisions of the act of 1863 in regard to appeals from a decree of a justice of the supreme court of the District of Columbia holding a district court of the United States, it must necessarily operate as a repeal *pro tanto*, excepting appeals in prize causes from the general rule in regard to appeals in the supreme court of the District of Columbia, and placing them, along with appeals in prize causes in the "other district courts of the United States," in a new and separate category. Hence, if the present appeal had been taken during the period when the act of June 30, 1864, was in force, it would unquestionably have been properly taken, and the fact that in certain cases relating to prizes taken during the civil war intermediate appeals were taken to the general term of the supreme court of the District of

Columbia merely shows, what this court has already been called upon to notice, that in those proceedings the law was not as carefully considered by the counsel concerned as it might or should have been. (See discussion of *United States* v. *Farragut*, 22 Wall., 406, as contained in the opinion of this court in *Dewey* v. *United States*, 178 U. S., 510, 516.)

When the acts of 1863 and 1864 were respectively reenacted, with only slight verbal changes, in the Revised Statutes (sections 695, 696, 698, 701, 1009; R. S. D. C., 758, 762) there was certainly no intention to change the law in regard to appeals in prize causes in the District of Columbia from what it had been before. These sections had to be construed with reference to each other precisely as those parts of the statutes which were reenacted in them had had to be construed with reference to each other; and hence if this appeal had been taken after the adoption of the Revised Statutes, and before 1891, there can be no doubt that it would have been properly taken.

Section 5 of the act of March 3, 1891, in providing "that appeals or writs of error may be taken from the district courts or from the existing circuit courts direct to the Supreme Court in the following cases: * * * from the final sentences and decrees in prize causes," merely reenacted the previously existing law, except apparently in removing the previous limitation as to the amount involved, and it certainly drew no distinction in regard to such causes between the district court of the United States as held in the District of Colum-

bia and other district courts of the United States. Hence, if this appeal had been taken at any time before the passage of the act of February 9, 1893, it is clear that it would have been properly taken. This being so, it is submitted that the learned chief justice of the court of appeals is correct in stating that to construe the act of February 9, 1893, as requiring an appeal from a decree in prize proceedings in the supreme court of the District of Columbia to be taken to the court of appeals of the District of Columbia and not directly to this court, would involve a repeal of the preexisting law by implication, such as Congress could not have intended and such as a court of justice will always seek to avoid.

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